IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 209 of 2005
in
Notice of Motion No. 115 of 2005
in
Suit No. 651 of 2003

Sureshchand Gokullchand Agarwal ..Appellant

vs.

Sudhir Yagyadatta Mudgal ..Respondent

Mr.D.F.Sharma for appellant
None for respondent.

CORAM: A.P.SHAH &
S.J.VAZIFDAR JJ.
15th April, 2005

P.C.

1. Heard the learned Counsel appearing for the appellant. Respondent is absent despite service.

2. The plaintiff is claiming specific performance of an Agreement dated 11th July, 2000 whereby the respondent agreed to sell and transfer the suit flat for a consideration of Rs.3,00,000/- The appellant has already paid a sum of Rs.2,00,000/- and remaining amount is payable on delivery of possession. The appellant has categorically averred in the plaint that he had offered to pay the balance consideration of Rs.1,00,000/- to the respondent but he avoided to accept the amount. He has also averred that he is ready and willing to pay the balance consideration of Rs.1,00,000/- to

the respondent or to deposit the same in this Court. The statement of the appellant has not been controverted by the respondent who has failed to appear before the learned single Judge as well as before this Court. Under these circumstances, the learned single Judge was not right in refusing to grant ad-interim relief solely on the ground that the bank account of the appellant has insufficient balance. Merely because there was no sufficient amount lying in the bank account it cannot be said atleast at this interim stage that the appellant was not ready and willing to pay the balance amount. In our opinion, this is a fit case for grant of ad-interim injunction. We direct that there shall be ad-interim injunction in terms of prayer clause (b) of the Notice of Motion. The appellant is at liberty to apply for further interim reliefs after fresh notice to the respondent.

3. Appeal is accordingly disposed of.